

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.32 of 2013

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1. **Juweda Khatoon**, W/o Late Md. Siddik, resident of Village Chhoti Balia, Masur Chak, P.O. Lakhminia, P.S. Baliya, District Begusarai (Bihar).

.... Appellant/s

Versus

1. Union of India through its General Manager, N.E. Railway, Gorakhpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pravin Kumar Gupta-Advocate

For the Railway : Mr. Mahesh Prasad-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 5-04-2016

Sole appellant/ claimant Juweda Khatoon, who happens to be wife of deceased Md. Siddik having been refused to get claim vide order dated 08.10.2012 by the Member (Technical), Railway Claims Tribunal, Patna Bench in Claim Application No.0A 000190 of 2002 has challenged the same under present appeal.

2. Succinctly, the case of the appellant as placed and pleaded before the learned Tribunal is that on 25.03.2002 deceased proceeded from Sahebpur Kamal to Lakhminia by Train No.405-UP Mansi-Hajipur Passenger, having a valid ticket no.35888 could not get entrance inside the bogie and on account thereof, located himself near door. The train steamed off and covered near about hundred yards, unfortunately, Md. Siddik, on account of push and pool as well as jostling due to heavy rush, fell down from the bogie whereupon

sustained injury and died on the spot.

3. On the fard-beyan of Md. Aminul Haque, son of deceased, who was subsequently informed by his relative, arrived, Khagaria G.R.P. U. D. Case No.03 of 2002 was registered wherein police report was submitted after completing the investigation. Claim petition was accordingly, filed.

4. Respondent/ opposite party, Union of India through General Manager, N. E. Railway appeared and filed written statement wherein apart from raising ornamental objections, had also pleaded that deceased was not a bonafide passenger as no ticket was found at the time of preparing inquest report. Furthermore, it has also been submitted that in the facts and circumstances of the case, attracts application of Section 124-A (b) (c) of the Railway Act. In likewise manner, whatever been incorporated in the claim petition has completely been refuted and further, it has been stressed upon that alleged accident might have taken place on account of own negligence of deceased. Furthermore, it has been submitted that deceased was expected to take ordinary precaution even in case he had boarded the train which, by standing by the side of the door, deceased had ignored and on account thereof, the claim is barred, as is duly covered by Section 124-A (b) (c) of the Railway Act. In likewise manner, genuineness as well as authenticity of the ticket has also been

challenged, which has been produced, belatedly.

5. The learned Tribunal, on the pleadings of the respective parties framed following issues:-

1. Whether the deceased was victim of the alleged untoward incident and whether the alleged untoward incident is covered under Section 123(c) (2) of the Railways Act, 1989?

2. Whether the deceased Md. Siddik was a bonafide passenger of Train No.405 Up Mansi-Hajipur Passenger on 25.03.2002 of the time of alleged untoward incident?

3. Whether the claim application of the applicant is maintainable?

4. Whether the Applicant/ dependents of the deceased are entitled to receive compensation, as claimed for?

And while deciding the Issue No.1, held that it was a case of run over and in likewise manner, Issue Nos.2 and 4 were also decided adverse to the interest of the appellant/ claimant. Consequent thereupon, claim petition was rejected, subject matter of instant appeal.

6. Learned counsel for the appellant has submitted that the finding recorded by the learned Tribunal happens to be wrong, cryptic, because of the fact that neither pleaded at the end of the



respondent/ opposite party nor having some sort of evidence adduced on behalf of respondent/ opposite party on this score, the learned Tribunal on its own concluded that it is a case of “run over” and to justify the same, adopted illegal procedure. In same breath, it has been submitted that learned Tribunal decided the issue in pre-occupied mind and that happens to be reason behind transgressing the limit, inventing a third case on its own, which neither comes out at the end of appellant nor pleaded by the respondent and drabbled the claim by deciding issue no.1 against the appellant and, the remaining issues have also been decided in same ardent manner. That being so, the learned Tribunal deflected itself from the settled judicial norms whereunder new case that too, on its own volition, is forbidden, proceeded and dismissed the claim petition. Furthermore, it has been submitted that inquest report was prepared by the police wherein there happens to be complete absence of a disclosure that pocket of the apparel, which the deceased was wearing, were searched out and nothing was found. Furthermore, from the production-cum-seizure list, it is evident that at the same place just after recording of fard-beyan, ticket was produced by the informant and the same was seized by the police.

7. Apart from this, it has also been submitted that status of informant being not an eye witness has much been emphasized by

the learned Tribunal though there was no occasion available for the same. In the fard-beyan itself, there happens to be specific disclosure that he was informed regarding the mishappening by his relative whereupon he came to the place and confronted with the situation.

8. It has further been urged that the order impugned suffers from conjectures and surmises, because of the fact that apart from identifying those grounds which were not at all existing on the record, also speaks non-application of mind as, from Para-12 of the order, it is evident that learned Tribunal had doubted presence of police on 25.03.2002 at 11.30 hours as the first information report was registered on the same day at 16.00 hours. From the relevant document, it is evident that memo was issued by the Station Master and on the basis thereof, police had come and recorded fard-beyan of Md. Aminul Haque. Therefore, presence of police could not be doubted. Apart from this, the aforesaid exercise of the police which happens to be within the control of railway has never been doubted at the end of the respondent/ opposite party. On account thereof, the judgment and order impugned did not justify its relevance.

9. At the other end, the learned counsel representing the respondent has supported the finding recorded by the learned Tribunal and submitted that the deficiencies persisting in the case of the appellant has rightly been identified whereupon dismissal of the claim

petition happens to be just, legal and proper.

10. It has also been contended on behalf of learned counsel for the respondent that unless and until applicant succeeds in substantiating its case, is not entitled for claim. As she failed to discharge the burden effectively, side by side presence of suspicious circumstances visualizing therefrom, did not justify claim, as a result of which rightly been rejected.

11. Before coming to the facts of the case, certain legal provisions applicable to the facts and circumstances of the case, has to be noticed. Untowards incident is the crucial issue which needs proper appreciation whenever a claim under Railway Act is filed.

12. Under Chapter-XIII, liability of Railway Administration for death and injury to passenger due to accident has been incorporated whereunder, Section 123 begins with definition. Under Clause-C “untoward incident” has been defined as:-

“(1) (i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot out or arson,

by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers].”

13. From plain reading of the aforesaid definition, it is apparent that apart from falling victim at the hands of other during course of criminal activity irrespective of having over train or at the platform, waiting room, cloak room, reservation or booking office or any other places within the precincts of a railway station and in likewise manner, falling of any passenger from a train carrying passenger have been identified to be untoward incident. Section 124 speaks about liability. Section 124A deals with compensation on account of untoward incident and the exception happens to be:-

“ Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to-

- (a) suicide or attempted suicide by him;*
- (b) self-inflicted injury;*
- (c) his own criminal act;*
- (d) any act committed by him in a state of*

intoxication or insanity;

- (e) *any natural case or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.*

Explanation.- For the purposes of this section, "passenger" includes-

- (i) *a railway servant on duty; and*
- (ii) *a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident."*

That means to say, in all other case, save and except so identified herein above, claim petition would be maintainable. As per Evidence Act, he, who comes to have verdict in his favour, has to substantiate his case and for that carries burden, at the other hand, if the opponent contest, then in that event, onus shift whereupon he has to prove his own case so pleaded.

14. As such, whenever an application happens to be with regard to claim of compensation, the applicant has to substantiate that deceased/ injured was a passenger having valid ticket and further, met with untoward incident. After discharging such burden, the onus shifts

upon the adversary to suggest that the case of the applicant lies under exceptions so enumerated under Section 124A and on account thereof, not at all entitled for compensation.

15. From Para-5 of the judgment, it is evident that learned Tribunal had detailed the evidence oral as well as documentary adduced on behalf of appellant. At the present juncture, it looks incumbent to incorporate that after perusal of the lower court record as well as during course of hearing argument, respondent had not raised any kind of objection over authenticity of the document, more particularly, with regard to reference of memo communicated by the Station Master to Khagaria G.R.P. within whose jurisdiction Sahebpur Kamal Railway Station lies, presence of police officials having at the Sahebpur Kamal Railway Station, preparation of inquest report, preparation of production-cum-seizure list relating to ticket and regarding fard-beyan of Md. Aminul Haque coupled with the police report, which was submitted after concluding the investigation. In likewise manner, post mortem report also happens to be out of controversy. Therefore, death of deceased at the Sahebpur Kamal Railway Station happens to be undisputed. The only question now remains whether deceased was passenger or not and whether he was victimized under untoward incident. The production-cum-seizure list relates with railway ticket bearing no.35888 issued from Sahebpur



Kamal Railway Station to Lakhminia Station and the same was produced on 25.03.2002 at about 12.00 noon, then in that event, had there been suspected at the end of the respondent, would have led positive, concrete evidence to the effect that aforesaid ticket was not at all issued on 25.03.2002 rather it was of some other date. In likewise manner, the respondent should have substantiated by cogent and reliable evidence, by that time the Mansi-Hajipur Passenger 405-Up had not crossed. Furthermore, relevant ticket was fake as same was not sold by Sahebpur Kamal Railway Station.

16. Now, coming to oral evidence, Juweda Khatoon, Ramji Gosai have been examined to substantiate the claim. From the evidence of Ramji Gosai, it is evident that he had claimed himself to be a co-passenger and then, had disclosed the event of untoward incident. Although, fard-beyan speaks about information received from Md. Yusuf, this witness has stated that he had gone to the house of deceased to inform. However, categorically stated that after raising alarm at his end, train was stopped by means of chain pooling. The aforesaid event had not been controverted at the end of respondent, apart from the fact that respondent had not opted to enter into defence.

17. While going through the judgment impugned, it is evident that learned Tribunal had made out a new case than whatever been pleaded by the respective parties and for that, the learned



Tribunal tried to justify through his own perception. Furthermore, the learned Tribunal had doubted over genuineness of ticket on two score, non-mentioning the same in the police report and secondly, issuance of photo copy of ticket instead of original. The aforesaid two issues have got no relevance in the background of the fact that there happens to be no challenge at the end of respondent.

18. In ***Union of India vs. Prabhakaran Vijaya Kumar and others reported in (2008)9 SCC 527***, it has been held:-

“11. No doubt, it is possible that two interpretations can be given to the expression 'accidental falling of a passenger from a train carrying passengers', the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the

object of the statute and serves its purpose should be preferred vide Kunal Singh vs. Union of India (2003) 4 SCC 524(para 9), B. D. Shetty vs. CEAT Ltd. (2002) 1 SCC 193 (para 12), Transport Corporation of India vs. ESI Corporation (2000) 1 SCC 332 etc.

12. *It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide Alembic Chemical Works Co. Ltd. vs. The Workmen AIR 1961 SC 647(para 7), Jeewanlal Ltd. vs. Appellate Authority AIR 1984 SC 1842 (para 11), Lalappa Lingappa and others vs. Laxmi Vishnu Textile Mills Ltd. AIR 1981 SC 852 (para 13), S. M. Nilajkar vs. Telecom Distt. Manager (2003) 4 SCC 27(para 12) etc.*

13. *In Hindustan Lever Ltd. vs. Ashok Vishnu Kate and others 1995(6) SCC 326 (vide para 42) this Court observed:*

"In this connection, we may usefully turn to

the decision of this Court in Workmen vs. American Express International Banking Corporation wherein Chinnappa Reddy, J. in para 4 of the Report has made the following observations:

The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes (we have borrowed the words from Lord Wilberforce's opinion in Prenn v. Simmonds). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before

us, that is, Surender Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court we had occasion to say:

"Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions. "Francis Bennion in his Statutory Interpretation Second Edn., has dealt with the Functional Construction Rule in Part XV of his book. The nature of purposive construction is dealt with in Part XX at p. 659 thus:

"A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive and strained construction)."At p. 661

of the same book, the author has considered the topic of "Purposive Construction" in contrast with literal construction. The learned author has observed as under:

"Contrast with literal construction – Although the term 'purposive construction' is not new, its entry into fashion betokens a swing by the appellate courts away from literal construction. Lord Diplock said in 1975: 'If one looks back to the actual decisions of the [House of Lords] on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions'. The matter was summed up by Lord Diplock in this way - ...I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it." (emphasis supplied)

14. In our opinion, if we adopt a



restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford traveling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger i.e. a passenger traveling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression.

15. Section 2 (29) of the Railways Act defines 'passenger' to mean a person traveling with a valid pass or ticket. Section 123(c) of

the Railways Act defines 'untoward incident' to include the accidental falling of any passenger from a train carrying passengers. Section 124A of the Railways Act with which we are concerned states :

"124A. Compensation on account of untoward incident. - When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to -

(a) suicide or attempted suicide by him;

- (b) *self-inflicted injury;*
- (c) *his own criminal act;*
- (d) *any act committed by him in a state of intoxication or insanity;*
- (e) *any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.*

Explanation - For the purposes of this section, "passenger" includes -

- (i) *a railway servant on duty; and*
- (ii) *a person who has purchased a valid ticket for traveling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident".*

(emphasis supplied)

16. *The accident in which Smt. Abja died is clearly not covered by the proviso to 124A. The accident did not occur because of any of the reasons mentioned in clauses (a) to (e) of the proviso to Section 124A. Hence, in our opinion, the present case is clearly covered by the main body of Section 124A of the Railways Act, and not its proviso."*

19. Thus, after considering the factual as well as legal

aspect as referred above, the judgment impugned suffers from inherent deficiency and on account thereof, is set aside. Appeal is allowed. Respondent is directed to pay the statutory amount so identified within eight weeks, failing which appellant will be entitled to recover through process of the Court.

(Aditya Kumar Trivedi, J)

Patna High Court,
Dated-5.04.2016
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